

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1281 OF 2005

Babulal Hussein Karjivkar
and Ors. ..Petitioners

Vs.

Siddheshwar Devasthan Solapur
and Ors. ..Respondents

Mr.P.M.Pradhan for Petitioners
Mr.G.S.Godbole for Respondent no.1
.....

CORAM : B.H.MARLAPALLE, J.
DATE : MARCH 15, 2005

P.C.:

1. Heard Mr.P.M.Pradhan, the learned counsel for the petitioners and Mr.Godbole, the learned counsel for the respondent no.1.

2. This petition arises from the order passed by the learned IIIrd Additional District Judge, Solapur on 29.1.2005 below application Exh. 7 in R.C.A.No. 180 of 2004.

3. R.C.S.No. 686 of 1955 came to be decreed by the trial Court on 18.12.1958 and First Appeal No. 72 of 1959 came to be dismissed by the lower appellate Court on 12.8.1960. Second Appeal No. 1311 of 1960 came to be dismissed by this Court on 11.8.1965.

Darkhast proceedings initiated after the dismissal of the First Appeal came to be struck off by the learned Jt.Civil Judge S.D. vide his order dated 26.4.1965 on the ground that this Court had stayed the execution in Second Appeal No. 1311 of 1960. On dismissal of the Second Appeal, R.D.No. 375 of 1993 came to be filed before the learned Civil Judge S.D. at Solapur for execution of the decree. The Judgment Debtors had filed applications at Exhs. 47 and 48 in the said Darkhast proceedings sometimes in the year 1975. The said applications came to be decided along with other applications filed by the Judgment Debtors by order dated 17.8.1998 below Exh.1 and Exh.83. The Court had directed the Collector, Solapur and City Survey Officer Solapur to execute the decree and report compliance to the Court on or before 17.9.1998 and the decree was to be executed as per the directions.

4. It appears in the decided Darkhast proceedings applications came to be filed at Exhs. 161, 162, 172, 178 and 185 and they were dismissed by the executing Court vide order dated 7.7.2004. This order has been challenged in R.C.A.No.180 of 2004 by the present petitioners and in the said appeal, an application Exh. 7 came to be filed for stay to the execution of the decree.

5. The obstruction sought to be made by the petitioners was in respect of 8 gunthas of the suit land. They had claimed that it was part of City Survey No. 6055 and not Survey No.6054. It was further submitted that the land in City Survey No. 6055 was brought within the purview of slum development by the Govt. of Maharashtra by issuing a specific Notification and thirdly, it was contended that they were in possession of the said land over about 60 years and were not impleaded as parties in the suit or in all the appeals. It was also submitted that the execution proceedings were filed beyond limitations, in view of Article 137 of the Limitations Act.

6. The appellate Court was required to consider the only issue of staying the execution proceedings pending the appeal. It noted that in the decree passed in R.C.S.No. 686 of 1955 it was held that subject land of 8 gunthas was part and parcel of City Survey No. 6054 and this finding has been confirmed right upto this Court. The contention that it formed part of City Survey No. 6055 has thus no material force. The slum declaration was admittedly in respect of land survey nos. 6055 and not 6054. The decree having been confirmed upto this Court.

7. The lower appellate Court noted that in all the

proceedings right upto this Court, it was held that respondent no.1 alone i.e. Siddheshwar Devasthan at Solapur was the owner of the suit premises and Regular Darkhast was pending since 1973. On the issue of limitation, it was noted that Darkhast was filed within a period of 12 years after the Second Appeal was decided by this Court and therefore, prima facie finding has been recorded that the issue of limitation would not come in the way. The view taken by the lower appellate Court in rejecting the application at Exh.7 cannot be termed as perverse or manifestly erroneous calling for interference in this petition under Article 227 of the Constitution of India.

8. Hence, the petition fails and the same is rejected summarily.

. Certified copy of this order is expedited.

[B.H.MARLAPALLE, J.]